



Networth News

State of Utah, Department of Financial Institutions, Second Quarter 2005

COMMISSIONER'S COMMENTS

G. Edward Leary, Commissioner

Department Joins Information-Sharing campaign to Improve Bank Secrecy Act Enforcement

On June 1, 2005, after obtaining clearance from the Utah Attorney General's Office, I signed legal documents establishing a protocol for sharing information between the department and federal banking agencies. The documents are designed to streamline enforcement of the Bank Secrecy Act. Utah was one of thirty-one states that signed the documents on that day at the Conference of State Bank Supervisors Annual Meeting.

The background is that on September 30, 2004, the Federal Banking Agencies (FBAs), including, the Board of Governors of the Federal Reserve System (FED), the Federal Deposit

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CHIEFLY SPEAKING

Michael Jones, Chief Examiner

In September of 1990, the Department moved from its offices on the second floor of the Heber M. Wells building to our present location on the second floor of the old Auerbach's building. The Department leased 6,946 square feet of office space in an area previously occupied by the City of Salt Lake. During the retrofitting and remodeling of the City and County Building, Salt Lake City occupied nearly all of the building. The Department's new lease was for five years.

In July of 1995, the Department negotiated an amendment of its lease. At that time, the owners of the building were contemplating reconstructing the parking structure and needed to have in place long-term commitments from some key tenants. Based on a favorable lease rate, the Department committed to a ten-year extension on its lease.

In the Fall of 1996, the Department was able to pick up an additional 240 square feet of space in the northwest corner of the office. The space was remodeled and became an office for our Information Technology Manager, who previously was in a cubicle in the open area of the Department. The terms of the 1995 amended lease did not change with acquisition of the additional space. The lease payments, however, increased with the Department now occupying 7,186 square feet.

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Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) signed a Memorandum of Understanding (MOU) with Financial Crimes Enforcement Network (FinCEN) agreeing to share certain information pertaining to the administration of the Bank Secrecy Act. The FBAs MOU provides that confidential supervisory information that is jointly held by a FBA and a state financial institutions agency will not be disclosed to FinCEN without approval of the State Agency.

To help expedite that process and get the states a seat at this table, three associations, representing state agencies, the Conference of State Bank Supervisors (CSBS), the Money Transmitter Regulators Association (MTRA), and the National Association of State Credit Union Supervisors (NASCUS) established a working group to draft a model MOU that all states could sign. Utah was selected as one of five states to help draft the model MOU. This group has been working diligently since last October with FinCEN and the Internal Revenue Service (IRS) to produce two model MOUs whose purpose is to achieve a coordinated approach to supervision by leveraging intelligence. Besides the MOU, CSBS and federal banking agencies have drafted a letter of agreement providing for more efficient and effective processing of jointly-held information to FinCEN.

The goal is to have all 50 states sign these documents and establish this working relationship with both FinCEN and the IRS.

The states signed:

1. A “Letter of Agreement Regarding the Provision of Jointly Held Confidential Supervisory Information to the Financial Crimes Enforcement Network”

This agreement states that when either the FBA or State Agency sends jointly held confidential supervisory information to FinCEN, they will send to the FBA or State Agency either: (1) a copy of such information or (2) a reasonably detailed description of such information.

The desired outcome is expedited processing for information sharing. Without this agreement, the process is laborious in that each agency must receive permission from all other agencies involved before the information can be shared.

2. A “Memorandum of Understanding Between the US Department of the Treasury, Financial Crimes Enforcement Network (FinCEN) and (State Agency)”
 - A. In this MOU, the State Agency agrees to provide FinCEN with:
 - (1) An Annual Report.
 - (2) Certain Program Documents relating to BSA Compliance.
 - (3) Quarterly Reports concerning the number of BSA examinations conducted.
 - (4) Special BSA Examination Project Information evaluating BSA risks on a statewide or regional basis.

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Application Activity Report Utah Department of Financial Institutions For quarter ending June 30, 2005

Branch Approval	Address	Received	Status
Transwest Credit Union	2277 E Ft Union Blvd, Midvale	8/16/04	Approved 8/30/04
Utah Central Credit Union	5625 W 13100 S, Herriman	8/17/04	Approved 8/31/04
Members First Credit Union	120 E 1000 S, Brigham City	10/22/04	Approved 11/23/04
Salt Lake Schools Credit Union	all existing shared branches	11/19/04	Approved 12/3/04
Nebo Credit Union	560 N Main, Springville	1/6/05	Approved 1/18/05
Premier Services Credit Union	outlet shared services of Mountain America Credit Union	1/14/05	Time suspended 1/31/05
Balance Rock Credit Union	494 E Main, Price	1/26/05	Approved 2/25/05
SunFirst Bank	910 S Bluff St, St George	2/26/05	Opened 4/29/05
State Bank of Southern Utah	145 S River Rd, St George	2/18/05	Approved 3/10/05
Barnes Banking Company	229 E St George Blvd, St George	3/29/05	Opened 5/2/05
Barnes Banking Company	1220 S State St, Orem	4/11/05	Approved 5/4/05
Newspaper Employees Credit Union	90 S 400 W #600, SLC	6/2/05	Approved 6/16/05
Salt Lake Schools CU	4 outlet locations	6/24/05	Accepted 6/27/05
Premier Services Credit Union	4 outlet locations	6/21/05	Accepted 6/27/05
Utah Power Credit Union	4 outlet locations	6/2/05	Accepted 6/22/05
Firefighters Credit Union	4 outlet locations	6/2/05	Accepted 6/22/05
Alliance Credit Union	4 outlet locations	6/2/05	Opened 6/24/05
Utah Law Enforcement CU	4 outlet locations	6/2/05	Accepted 6/22/05
Relocations	Address	Received	Status
Bank of American Fork	from 408 E 12300 S, Draper to 700 E 12300 S, Draper	11/3/04	Approved 11/15/04
Grand County Credit Union	from 186 W Center St, Moab to 725 N Main, Moab	4/26/05	Approved 5/13/05
Credit Union Service Centers	from 36 S State #140, SLC to 36 S State #103, SLC	5/19/05	Opened 6/16/05

Regulation CC – Expedited Funds Availability

Melanie Anderson, Examiner

Regulation CC, Expedited Funds Availability, governs the time frames under which an institution can place holds on checks. The regulation allows for two different kinds of check holds. The first is a “case-by-case” hold that the institution can institute if their policy is to allow customers access to deposits sooner than those parameters outlined in the regulation. A case-by-case hold simply allows the institution to revert back to the availability schedules of 2 days for local checks and 5 days for non-local checks.

The second type of hold allowed by the regulation is an “exception” hold. If an institution intends to hold deposits longer than that allowed by the normal availability schedule, then they must use an exception hold as outlined in the regulation. There are six types of exception holds. They are:

- New accounts
- Large deposits
- Redeposited checks
- Repeated overdrafts
- Reasonable cause to doubt collectibility
- Emergency conditions

In looking more closely at reasonable cause to doubt collectibility, the regulation states: “Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a **particular class** or is deposited by a particular class of persons”. Examples of reasonable cause to doubt collectibility could include stale dated

checks, notice of nonpayment, impending insolvency of drawer or paying bank, kiting, drawer has insufficient funds in account, or stop payment on the check.

Recent examinations have identified numerous institutions that are placing holds on credit card convenience checks under the exception hold “reasonable cause to doubt collectibility”. The regulation is clear that an institution cannot place a hold for reasonable cause based on a **particular class** of checks. Therefore, the practice of placing holds on credit card convenience checks under the exception hold “reasonable cause to doubt collectibility” violates Reg CC. If the institution wishes to place a hold on these checks, the institution must use one of the other exception hold reasons that would apply, or institute a case-by-case hold.~

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In July of 2001, the Department was authorized to increase the size of the staff by ten examiners. Since the existing office space was not sufficient to absorb ten additional employees, more space was needed. The office space next to the Department was occupied by the U.S. Bureau of Land Management (BLM). The BLM had a long-term lease on the office space and did not want to relocate its offices so that the Department could acquire the adjacent space. So, to accommodate the growth in the examiner staff, the Department leased 1,549 square feet of office space located down the hall and around the corner from the main office. An amendment to the 1995 ten year lease was negotiated to include the lease of the additional space for the remaining four years. The Department was now leasing 8,735 square feet of the old Auerbach’s

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B. In this MOU, FinCEN agrees to share with the State Agencies:

- (1) FinCEN Enforcement Actions
- (2) When it considers the imposition of civil enforcement remedies.
- (3) Consultations with the State prior to taking an enforcement action.
- (4) Copies of correspondence between FinCEN and the financial institution.

The purpose of this MOU is better compliance in the filing of reports and keeping of records that have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

This MOU will aid in the examination process, maximize resources, and better ensure consistency in the application of the regulatory provisions of the BSA. This MOU will enhance communication and coordination of efforts to deter and interdict terrorist financing and money laundering.

A third Agreement with the IRS is still being reviewed but should be available soon for signature:

3. A "Memorandum of Understanding between the Internal Revenue Service and the (State regulatory agency) concerning Money Service Businesses and Certain Other Non-bank Financial Institutions"

A. The scope of activities covered by this MOU include:

- (1) Sharing BSA and Anti Money Laundering (AML) examination information.
- (2) Sharing lists of Money Service Businesses (MSB).
- (3) Sharing status of licensing or charters.
- (4) Training of examiners, both IRS and State.

B. The Sharing of Program Documents and Examination Procedures.

- (1) The IRS will share with the State Agency on a quarterly basis BSA compliance apparent violations.
- (2) IRS will share current listing of MSBs within the jurisdiction of the State regulator.
- (3) The state will provide to the IRS a listing of state licensed, chartered, or supervised MSBs.

The purpose of this MOU is to enhance interagency cooperation, increase the filing of required reports and retention of records and to foster the flow of information between the parties in a manner that avoids undue regulatory duplication on MSBs. The MOU also conserves

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building.

At the end of this June, the Department's 1995, ten-year lease expired. Earlier this spring, the Department began the process of negotiating a new lease. As we did so, we learned that the BLM was moving out of the space adjacent to our main office. Our discussions quickly turned to acquiring the BLM's former space, surrendering the office space we acquired in 2001, and amending the lease. In May, an amendment to the 1989 lease was signed. The new lease includes 3,357 square feet of space adjacent to our original offices, deletes the 1,549 square feet of space acquired in 2001, and extends the expiration date to June 30, 2010

Since May 31st, the Department has been undergoing some remodeling. We have endured the noise and dust of walls being torn down, new walls being constructed and painted, cabinet and counter tops being installed, and new carpet being laid. By the time you read this, the Department will have moved into its new office space. We now occupy 10,543 square feet of the old Auerbach's building. The new space includes a small conference room, a break room (a first for the Department), two new enclosed offices, and plenty of open space for system cubicles. We also have room for future growth. The Department is once again all together. If you get the opportunity, stop in and see the Department's newly expended offices.~

... **Leary**, continued from page 5

resources and better ensures consistency in the application of the regulatory process.

All of these written agreements highlight the recognition by FinCEN and the IRS of the vital role that states, including Utah, play in preventing money laundering and the terrorist financing through both depository institutions and money service businesses MSBs).

These documents help cement this vital state-federal partnership. Not only will these agreements provide specific analysis reports to the state regulators, but also FinCEN will be receiving and analyzing additional data provided by the states. As each agency will be receiving more information through this process, BSA examinations should be more efficient and supervisory agencies will have the ability to provide better guidance to the industry.~

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